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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 12.10.2012

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COMPANY PETITION NO. 280 OF 2012

IN THE MATTER OF

M/S SAMAYA INVESTMENT & TRADING PVT. LTD. & ORS.

.....PETITIONERS

Through: Mr. Arvind Biswal and Mr. Rohit Gandhi,
Advocates for petitioner-companies.
Mr. K.S. Pradhan, Deputy Registrar of
Companies for Regional Director, Northern
Region.
Ms. Ruchi Sindhwani, Advocate for the
Official Liquidator.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This second motion joint Petition has been filed under Sections 391(2) and 394 of the Companies Act, 1956 (for short "Act") seeking sanction of the Scheme of Amalgamation (for short "Scheme") of M/S SAMAYA INVESTMENT & TRADING PRIVATE LIMITED (Transferor Company No.1), M/S LUCRATIVE LEASING FINANCE & INVESTMENT CO.

LTD. (Transferor Company No. 2), with M/S PARTEEK FINANCE AND INVESTMENT COMPANY LIMITED (Transferee Company).

2. The registered offices of the Transferor and Transferee Companies are situated at New Delhi, within the jurisdiction of this Court.
3. Details with regard to the date of incorporation of Transferor and Transferee Companies, their authorized, issued, subscribed and paid-up capital have been given in the Petition.
4. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2011 of the Transferor and Transferee Companies have also been enclosed with the Petition.
5. Copies of the Resolutions passed by the Board of Directors of the Transferor and Transferee Companies approving the Scheme have also been placed on record.
6. It has been submitted that no proceeding under Sections 235 to 251 of the Act is pending against the Petitioner Companies.

7. So far as the share exchange ratio for Scheme of Amalgamation is concerned, the Scheme provides that, upon the Scheme finally coming into effect, the Transferee Company shall issue shares in the following manner:-

(a) TRANSFEROR COMPANY NO. 1

50 (Fifty) Equity Share(s) of the face value of Rs. 10/- (Rupees Ten) each credited as fully paid up in the share capital of Transferee Company as on the Effective Date for every 11 (Eleven) fully paid Equity Share(s) of the face value of Rs. 100/- (Rupees Hundred) each held in Transferor Company No. 1.

(b) TRANSFEROR COMPANY NO. 2

1 (One) Equity share(s) of the face value of Rupees 10/- (Rupees Ten) each credited as fully paid up in the share capital of the Transferee Company for every 1 (One) fully paid up Equity Share(s) of the face value of Rs. 10/- (Rupees Ten) each held in Transferor Company No. 2.

The Share Valuation Report certifying the Fair Exchange Ratio of the Equity Shares for the merger of the Petitioner Companies has also been placed on record.

8. The Petitioner Companies had earlier filed CA (M) No. 92 of 2012 seeking directions of this Court for dispensation of meetings of shareholders and creditors. Vide order dated 25th May, 2012, this Court allowed the Application and dispensed with the requirement of convening meetings of Shareholders and creditors of all the Transferor and Transferee Companies.
9. The Petitioner Companies have thereafter filed the present Petition seeking sanction of the Scheme. Vide order dated 31st May 2012 notice of the Petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Notice was duly accepted on behalf of the Regional Director and the Official Liquidator. Citations were also directed to be published in "Indian Express" (English Edition) and "Dainik Jagran" (Hindi Edition). Affidavits of Publication have been filed

by the Petitioners showing compliance regarding publication of citations in the aforesaid newspapers on 15.06.2012. Copies of the newspapers cuttings, in original, containing the publications have been filed along with the Affidavit of Publication.

10. Pursuant to the notice issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received, the Official Liquidator has filed his report on 23.08.12. Relying on Clause 12.1 of the Scheme, the Official Liquidator has stated that the authorized share capital of the Transferor Companies shall be merged and added to the authorized share capital of the Transferee Company. In his report, the Official Liquidator has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Company No. 1 & 2 do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the second proviso of Section 394(1) of the Companies Act, 1956.

11. In response to the notice issued in the Petition, Mr. Rakesh Chandra, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit on 24.08.2012. Relying on Clause 8.1 of Part-II of the Scheme, he has stated that all the employees of the Transferor Companies shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court. The Regional Director has further stated that para 6 of Part II of the Scheme provide the Accounting Treatment in detail, which is in accordance with Accounting Standard issued by the Institute of Chartered Accountants of India. The Regional Director has further submitted that M/s Samaya Investment & Trading Pvt. Ltd. (Transferor Company No.1) is a non-banking finance company and registered with the Reserve Bank of India and according to Circular No. RBI/2005-06/285, DNBS (PD) C.C. No. 63/02.02/2005-06 dated 24.01.2006, the non-banking finance company needs to inform Reserve Bank of India within 1(one) month from the date of order of court about amalgamation.

12. No objection has been received to the, Scheme from any other party. Learned counsel for Petitioner Companies has submitted that the Petitioner Companies have filed affidavit of Mr. Sunny Varghese, Director of Transferee Company dated 31.08.2012 confirming that neither the Petitioner Companies nor their counsel has received any objection pursuant to citations published in the newspapers. Further, in the said affidavit, the Petitioner Companies have specifically undertaken to comply with the requirement of informing the Reserve Bank of India within 30 days from the date of order of the Court about amalgamation, as mentioned by the Regional Director in his report. Subsequently, an additional affidavit dated 09.10.2012 has been filed on behalf of the Petitioner Companies reaffirming that no objections have been received by the Petitioner Companies or their counsels as on the date of filing of the additional affidavit.

13. Even today, Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for Regional Director, Northern Region and Ruchi

Sindhwani, learned counsel for Official Liquidator state that they have no objection to the present Scheme being sanctioned.

14. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; affidavit/report filed by the Regional Director, Northern Region and the Official Liquidator, attached with this Court to the proposed Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 391 and 394 of the Act. The Petitioner Companies will comply with the statutory requirements in accordance with law including informing the Reserve Bank of India within 30 days of this order about the amalgamation. Certified copy of the order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of Sections 391 and 394 of the Act and in terms of the Scheme, the whole of the undertaking, the properties, rights and powers of the Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme,

all the liabilities and duties of the Transferor Company be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

15. Learned counsel for the Petitioner, states that the Petitioner Companies would voluntarily deposit a sum of Rs. 1,00,000/-; with the Common Pool fund of the Official Liquidator within three weeks from today. The said statement is accepted.

16. The Petition is allowed in the above terms. Order dasti.

INDERMEET KAUR, J.

OCTOBER 12, 2012

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